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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PROMEDEV, LLC,

CASE NO. C22-1063JLR

11 Plaintiff,

SHOW CAUSE ORDER

12 v.

13 ROBY WILSON, et al.,

14 Defendants.

15 Before the court is Plaintiff Promedev, LLC’s motion for summary judgment.

16 (Mot. (Dkt. # 72); Reply (Dkt. # 84).) Defendants Roby Wilson, MaXXiMedia

17 Advertising Co., and Imagipix Corporation (together, “Defendants”) oppose the motion.

18 (Resp. (Dkt. # 81).) The court issues the following show cause order regarding

19 Defendants’ claim for copyright infringement.

20 Promedev moves for summary judgment on Defendants’ claim for copyright

21 infringement. (Mot. at 7-15.) Defendants argue that Promedev’s motion ignores “well

22 over a hundred advertisements created.” (Resp. at 8.) The court requires clarification.

1 To establish a claim for copyright infringement, “two elements must be proven:
2 (1) ownership of a valid copyright, and (2) copying of constituent elements of the work
3 that are original.” *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 361 (1991).
4 To satisfy the first element, the claimant must have a valid copyright registration. 17
5 U.S.C. § 411(a); *Fourth Est. Pub. Benefit Corp. v. Wall-Street.com, LLC*, 586 U.S. ---,
6 139 S. Ct. 881, 886 (2019) (“Before pursuing an infringement claim in court, . . . a
7 copyright claimant generally must comply with §411(a)’s requirement that ‘registration
8 of the copyright claim has been made.’” (quoting 17 U.S.C. § 411)); *see also Douglas v.*
9 *Warner Bros. Film*, No. 2:23-cv-02320-TLN-CKD (PS), 2023 WL 7305275, at *2 (E.D.
10 Cal. Nov. 6, 2023) (holding that the plaintiff failed to state a copyright infringement claim
11 because he did not allege that he “own[ed] any copyrighted material that ha[d] been
12 registered”).

13 Defendants’ counterclaims list eight copyright registrations covering Promedev
14 commercials. (See Counterclaims (Dkt. # 25) ¶ 52.) Yet Defendants now suggest that
15 Promedev has infringed “well over a hundred advertisements” without citing a single
16 copyright registration. (Resp. at 8. *See generally id.*) Federal Rule of Civil Procedure
17 56(f)(2) provides that the court may, “after giving notice and a reasonable time to
18 respond . . . grant the motion on grounds not raised by a party[.]” Fed. R. Civ. P. 56(f).
19 Thus, the court ORDERS Defendants to show cause why their claim for copyright
20 infringement should not be dismissed in its entirety for failure to identify the registered
21 copyrights Promedev allegedly infringed. In particular, the court ORDERS Defendants
22 to provide evidence of the following:

- 1 1. The copyright registration numbers of all advertisements Promedev allegedly
- 2 infringed;
- 3 2. The date of each copyright registration;
- 4 3. The date(s) Promedev allegedly infringed each copyright; and
- 5 4. The platform and/or channel on which Promedev aired each allegedly infringing
- 6 advertisement (e.g., Facebook, YouTube, television (via Fox News)).

7 Defendants must do so by no later than **8 a.m. PDT on Thursday, March 28,**

8 **2024.** Failure to comply with this order will result in the court granting summary
9 judgment on Defendants' copyright infringement claim and dismissing that claim with
10 prejudice. *See* Fed. R. Civ. P. 56(f).

11 Dated this 26th day of March, 2024.

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JAMES L. ROBART
United States District Judge